IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

THOMAS H. BEGAY	:	
P.O. Box 4499	:	
Blue Gap, AZ 86520	:	**CIVIL ACTION**
	:	
Plaintiff	:	
	:	
v.	:	
	:	**NO:**
UNION PACIFIC RAILROAD	:	
COMPANY, A DELAWARE	:	
CORPORATION	:	
1400 Douglas Street	:	
Omaha, NE 68179	:	
	:	**JURY TRIAL DEMANDED**
Defendant	:	

COMPLAINT

1.   This suit is governed by the Federal Employers' Liability Act, 45 U.S.C. Sec. 51 et seq. which Act grants this Court jurisdiction over this action.

2.   Plaintiff, Thomas H. Begay, is a competent individual residing at the above-captioned address.

3.   At all times relevant hereto, the Defendant, Union Pacific Railroad Company was engaged in interstate commerce as a common carrier by rail, operating a line and system of railroads and transacting substantial business throughout the states of Nebraska, New Mexico and other states of the United States.

4.   At all times relevant hereto, the Plaintiff was employed by Defendant railroad and was acting in the course and scope of his employment with Defendant, and was engaged in the furtherance of interstate commerce within the meaning of said Act.

5.   At all times relevant hereto, the acts of omission and commission causing injuries to the Plaintiff were done by the Defendant, its servants, agents and/or employees acting in the course and scope of their employment with and under the direct and exclusive control of the Defendant.

6.   All the property, equipment and operations involved in this occurrence were, at all times relevant hereto, owned and/or under the direct and exclusive control of the Defendant, its agents, servants and/or employees.

COUNT I

7.   Plaintiff incorporates herein by reference the allegations contained in paragraphs 1 through 6, inclusive, as though fully set forth at length.

8.   On or about a date between March 1, 2006 and March 31, 2006, while working in the course and scope of his duties, the Plaintiff, Thomas H. Begay, was injured while building panels near Clear Lake, Utah.

9.   The aforesaid occurrence was directly and proximately caused in whole or in part by the negligence of the Defendant and/or the negligence of the Defendant's agents, servants and/or employees.

10.   As a direct and proximate result of the Defendant's negligence, the Plaintiff has suffered and will continue to suffer damages to his lower back including but not limited to: lumbar strain/sprain, degenerative disc disease of the lumbar spine and bulging of the discs of the lumbar spine.

11.   By reason of the aforesaid injuries, the Plaintiff has been disabled from gainful employment, his earning capacity has been permanently impaired, he has incurred and will continue to incur medical expenses, and he has suffered and will continue to

suffer inconvenience, great physical and mental pain and embarrassment.

WHEREFORE, the Plaintiff, Thomas H. Begay, demands judgment against the

Defendant, Union Pacific Railroad Co., in a sum in excess of ONE HUNDRED FIFTY

THOUSAND DOLLARS ($150,000.00) and the costs of this action.

COUNT II

12.   Plaintiff incorporates herein by reference the allegations contained in

paragraphs 1 through 11, inclusive, as though fully set forth at length.

13.   Throughout his career with the Defendant, the Plaintiff, while working

within the course and scope of his employment, was injured due to the negligence of the

Defendant, both generally and in the following particulars:

(a)   In failing to use ordinary care and caution to provide
        Plaintiff a reasonably safe place in which to work;

(b)   In failing to take any effective action to reduce, modify or
        eliminate certain job duties, equipment or practices so as to
        minimize or eliminate cumulative and repetitive trauma to
        which Plaintiff would be exposed;

(c)   In failing to periodically test employees such as the
        Plaintiff for physical effects of repetitive trauma, and
        failing to take appropriate action, including advising the
        Plaintiff as to the test results;

(d)   In failing to warn the Plaintiff of the risk of repetitive
        trauma injuries as a result of exposure to repetitive
        occupational trauma;

(e)   In failing to make reasonable efforts to inspect or monitor
        the levels/amounts of repetitive trauma produced by the
        work duties/tasks which the Plaintiff was required to
        perform for the Defendant; and,

(f)   In failing to provide the Plaintiff with protective equipment
        designed to protect him from repetitive trauma injuries as a
        result of exposure to repetitive occupational trauma and/or

supply him with equipment which would eliminate his
exposure to occupational stressors.

8.   The aforesaid occurrences were directly and proximately caused in whole

or in part by the negligence of the Defendants and/or the negligence of the Defendants'

agents, servants and/or employees.

9.   By reason of the aforesaid injuries, the Plaintiff has been disabled from

gainful employment, his earning capacity has been permanently impaired, he has incurred

and will continue to incur medical expenses, and he has suffered and will continue to

suffer inconvenience, great physical and mental pain, and embarrassment.

10.   As a direct and proximate result of the Defendant's negligence, the

Plaintiff has suffered and will continue to suffer damages to his lower back including but

not limited to: lumbar strain/sprain, degenerative disc disease of the lumbar spine and

bulging of the discs of the lumbar spine and the continuing aggravation of said injuries.

WHEREFORE, the Plaintiff, Thomas H. Begay, demands judgment against the

Defendant, Union Pacific Railroad Co., in a sum in excess of ONE HUNDRED FIFTY

THOUSAND DOLLARS ($150,000.00) and the costs of this action.

CAPPELLI MUSTIN

Date: 2/26/08

BY:_____/s/ Shawn M. Sassaman_____

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